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Security Council

Seventy-second year

Provisional

7960th meeting
Wednesday, 7 June 2017, 10 a.m.
New York

President:	Mr. Llorentty Soliz	(Bolivia (Plurinational State of))
Members:	China	Mr. Li Yongsheng
	Egypt	Mr. Moustafa
	Ethiopia	Ms. Guadey
	France	Mrs. Gueguen
	Italy	Mr. Cardi
	Japan	Mr. Akahori
	Kazakhstan	Mr. Tumysh
	Russian Federation	Mr. Zagaynov
	Senegal	Mr. Ciss
	Sweden	Ms. Schoulgin Nyoni
	Ukraine	Mr. Vitrenko
	United Kingdom of Great Britain and Northern Ireland	Ms. Mulvein
	United States of America	Ms. Sison
	Uruguay	Mr. Rosselli

Agenda

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994

Letter dated 17 May 2017 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council (S/2017/434)

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Letter dated 17 May 2017 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council (S/2017/436)

The meeting was called to order at 10.05 a.m.

Tribute to the memory of the victims of terrorism in Tehran

The President (*spoke in Spanish*): On behalf of the members of the Security Council, I vigorously condemn the atrocious terrorist attack committed in Tehran. The members of the Security Council express their deepest condolences to the families of those who have lost their lives and their solidarity with the people and Government of the Islamic Republic of Iran.

The members of the Security Council observed a moment of silence.

Adoption of the agenda

The agenda was adopted.

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

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The President (*spoke in Spanish*): : In accordance with rule 37 of the Council's provisional rules of procedure, I invite the representatives of Bosnia and Herzegovina, Croatia and Serbia to participate in this meeting.

On behalf of the Council, I welcome His Excellency Mr. Davor Ivo Stier, Deputy Prime Minister and Minister for Foreign and European Affairs of the Republic of Croatia. I request the Protocol Officer to escort him to a seat at the Council table.

Mr. Davor Ivo Stier, Deputy Prime Minister and Minister for Foreign and European Affairs of the Republic of Croatia, was escorted to a seat at the Council table.

The President (*spoke in Spanish*): In accordance with rule 39 of the Council's provisional rules of procedure, I invite the following briefers to participate in this meeting: Judge Carmel Agius, President of the International Tribunal for the Former Yugoslavia; Judge Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals; and Mr. Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia and Prosecutor of the International Residual Mechanism for Criminal Tribunals.

The Security Council will now begin its consideration of the item on its agenda.

I wish to draw the attention of Council members to document S/2017/434, which contains the text of a letter dated 17 May 2017 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council. I also wish to draw the attention of members to document S/2017/436, which contains a letter dated 17 May 2017 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council.

I now give the floor to Judge Agius.

Judge Agius (*spoke in Spanish*): At the outset, allow me to congratulate you, Sir, on your assumption of the presidency of the Security Council and to thank you for the support given to the Tribunal.

(*spoke in English*)

It is both an honour and a privilege to once again address the Security Council in my capacity as President of the International Tribunal for the former Yugoslavia, which just two weeks ago commemorated 24 years since its establishment by the Council pursuant to

resolution 827 (1993). As Council members are aware, the Tribunal will close its doors on 31 December. This is therefore one of the last occasions I will have to address this body, and I am here today to present the Tribunal's penultimate completion strategy report (S/2017/436, annex II).

Beginnings and endings are one shared aspect of the human experience across the great diversity of peoples and cultures of the world. Endings provide us with a chance to reflect on achievements and challenges alike, as well as on how far we have come. While the Tribunal remains on track to complete the mandate it was given by this body many years ago, back in 1993, there are significant obstacles that require the urgent attention of the Council. In the Tribunal's final year, we are all the more aware of the legacy that we share with the Security Council and of what will be written in the last pages of the Tribunal's history. Any unfinished business will remain a disturbing footnote in an otherwise successful — indeed, groundbreaking — attempt to hold persons accountable for the most heinous crimes that can be imagined. History will certainly judge us.

In relation to the remaining judicial workload, the Tribunal has made considerable progress towards completing the final trial and appeal proceedings. At trial, the case of *Prosecutor v. Ratko Mladić* remains on schedule and the Trial Chamber is fully engaged in deliberations and drafting of the judgement. Similarly, on appeal, the case of *Prosecutor v. Prlić et al.* is on schedule, with the Appeals Chamber in full deliberations and judgement-drafting mode. Judgements in both cases are planned to be delivered in November, as previously forecast.

As outlined in the completion strategy report, the Registry continues to provide full support to the Tribunal's judicial activities through the effective management of various sections, such as those concerning communications and outreach, victims and witnesses, conference and language services, as well as the United Nations Detention Unit, which runs a programme in line with or exceeding international humanitarian standards and is visited and monitored by the International Committee of the Red Cross on a regular basis.

The Tribunal, however, continues to face serious challenges. In the pending contempt case against Petar Jojić, Vjerica Radeta and Jovo Ostojić, the Republic of Serbia has failed to comply with its duties under the Tribunal's statute by refusing to cooperate with the Tribunal and to execute the arrest warrants of the accused that were issued almost two and a half years ago — I repeat, almost two and a half years ago. I remind the Security Council that I have raised this issue on a number of occasions — in my address of 8 June 2016 to this Council (see S/PV.7707) and to the General Assembly on 9 November 2016 (see A/71/PV.44), as well as in the Tribunal's completion strategy reports of May and November 2016 (S/2016/454, annex II, and S/2016/976, annex II)). More recently, I formally reported the Republic of Serbia's non-compliance in my letter of 1 March 2017 to the then-President of the Security Council.

I must emphasize once more that the charges against these individuals are extremely grave and that any interference with the Tribunal's witnesses undermines the nature and effective functioning of a judicial institution, especially one established by this very Council. Such allegations must be swiftly adjudicated. To speak plainly, the Republic of Serbia is in violation of its international obligations every day that these arrest warrants and orders for transfer are not executed. The Security Council has the capacity to tackle this issue, and it is imperative that it take decisive action.

Time is of the essence for the Tribunal to adjudicate these contempt proceedings before the end of its mandate, and they will — concluded or not — be an element of the shared legacy of the Tribunal and the Council, and of the efforts of the United Nations to end impunity. The Tribunal was created by the Security Council as part of these efforts, and the alleged interference with witnesses must not — indeed, cannot — go unanswered. We are ready and willing to try these individuals if they are delivered to The Hague, but we await the Council's urgent action. Let me be clear. I do not play games. As I have demonstrated throughout my presidency, I do what I say and I say what I mean. Neither I nor anyone at the Tribunal seeks to use this case to prolong the Tribunal's life.

Turning to other challenges, despite the fact that we are optimistic about completing all judicial work by 31 December, I must warn once again that the Tribunal continues to struggle to retain staff. Staff attrition will, in the final six months, pose a substantial — indeed, critical — threat to our ability to complete the remaining work on time. Although the Tribunal has done everything it can to retain staff, key staff members are leaving for more stable and long-term employment

elsewhere in light of the Tribunal's imminent closure. This does not call their loyalty into question, but reflects the simple reality that our staff members seek a continued livelihood beyond 31 December.

I take this opportunity to publicly acknowledge all the staff members and Judges of the Tribunal — one of whom is present here next to me — and to thank them for their outstanding work and dedication. Our talented staff members are integral to the Tribunal's ability to function, and it is only through much personal sacrifice on their part that we are making strong progress in the remaining cases and will be able to complete all work before our closing date. The Tribunal is deeply grateful for their service on behalf of international justice. Incentives to retain staff would enable us to ensure that our mandate is completed in an optimal manner. The Tribunal urgently needs the support of the United Nations in that regard.

In addition to the judicial workload, the Tribunal's liquidation efforts are continuing full-steam as we approach our end date. Those efforts include the scheduled downsizing of staff at various times throughout this year; the disposal or sale of Tribunal assets; the transfer or finalization of all commercial and non-commercial contracts; the disposition of all physical and digital records; and the handing over of any residual activities to the International Residual Mechanism for Criminal Tribunals. I can assure all Member States that the Tribunal remains committed to a timely and efficient liquidation process and to learning from the experience of the International Criminal Tribunal for Rwanda.

Finally, I turn to the Tribunal's legacy, which, as I noted at the outset, will be shared by the Security Council. The last year of the Tribunal's operations presents a unique opportunity to ask what our enduring legacy will be, as well as to cement that legacy by engaging with those most impacted by the Tribunal's work, and ensure that it will continue to have an impact in the future. For those reasons, while the primary focus is on concluding the remaining judicial work and a successful liquidation, the Tribunal is this year hosting a number of legacy and closing events designed to mark the end of a historic chapter in international criminal justice and to enable others to build upon the Tribunal's achievements and experience. Those events are completely reliant upon external funding. I wish to publicly acknowledge Austria, Finland, Germany, Italy, my own country of Malta, the Netherlands, Switzerland and, last but not least, the European Union, which have pledged funds and support thus far.

It is to that end as well that the Tribunal is involved in an ongoing project of establishing information centres within the region of the former Yugoslavia, as requested by the Council in resolution 1966 (2010). By providing local access to the Tribunal's public records and information about the Tribunal's work, the centres will play an invaluable role in continuing the legacy of the Tribunal in the region. The first information centre will open in Sarajevo, Bosnia and Herzegovina, and the Tribunal has re-initiated discussions with Croatia to establish a similar centre in Zagreb. Those discussions are at an advanced stage. The setting up of a third centre, in Srebrenica-Potocari, is awaiting the signing of a memorandum of understanding. It is my hope, and that of the Tribunal in general, that an information centre will also be established in Belgrade, Serbia.

As we look to the closure of the ICTY, in only a few short months, and to the Tribunal's final annual and completion strategy reports, we can be immensely proud of what we have achieved together since those early days in 1993. No institution can restore what was lost in the Yugoslav wars, or undo the terrible crimes committed during them. However, the Tribunal has demonstrated that, when the international community has the will to cooperate and to stand for what is right and just, those responsible for the most egregious violations of international humanitarian law can be held to account.

I ask that all members of the Security Council continue to stand for what is right and to support the Tribunal in the last six months of its life. We cannot conclude our mandate without the Council.

The President (*spoke in Spanish*): I thank Judge Agius for his briefing.

I now give the floor to Judge Meron.

Judge Meron: It is my great pleasure today to brief the Security Council once again on the progress of the International Residual Mechanism for Criminal Tribunals in the implementation of its mandate, and to do so under the presidency of Bolivia. I wish Bolivia great success in its leadership of the Council during this month. I would also like to express my congratulations to the incoming members of the Security Council, with whom I very much look forward to working over the coming period.

I also wish to take this opportunity to express my sincere gratitude to the Council's Informal Working Group on International Tribunals for its considerable support and attention paid to the Mechanism. I am particularly appreciative of Uruguay's skilled and able leadership of the Group.

Finally, I would be remiss if I did not acknowledge the sustained and sustaining support provided to the Mechanism by the Office of Legal Affairs under the outstanding leadership of Under Secretary-General for Legal Affairs and United Nations Legal Counsel Miguel de Serpa Soares and Assistant Secretary-General for Legal Affairs Stephen Mathias. I remain deeply grateful to them and to their colleagues for all of the assistance they provide to the Mechanism.

During my presentation today I will not refer to those matters fully addressed in my written report submitted on 17 May of this year (see S/2017/434, annex I), but will simply draw members' attention to some of the most salient issues and several important developments since the filing of the report.

Before I turn to my update on the work of the Mechanism, I would first note that, since I last appeared before the Council (see S/PV.7829), upon his appointment by the Secretary-General, Mr. Olufemi Elias joined the Mechanism as Registrar on 1 January. Mr. Elias has been working closely with colleagues at the International Tribunal for the Former Yugoslavia (ICTY) to ensure that the Mechanism is ready to take responsibility for all remaining functions of the ICTY. In that respect, I fully anticipate that the Mechanism will be entirely self-sufficient, including in terms of its administrative capabilities, upon the closure of the ICTY at the end of this year.

Turning to the Mechanism's core judicial work, I am very pleased to inform the members of the Council that, on the whole, the Mechanism continues to make excellent progress in the handling of its judicial work and is indeed seeing a steady increase in judicial work over time. In 2012, the Mechanism rendered 25 decisions and orders; in 2013, it rendered 79; in 2014, it rendered 192; in 2015, it rendered 209; and in 2016, 405 decisions and orders were issued. As of 1 June 2017, 146 decisions and orders have been issued. I should note that, in carrying out their judicial work, the judges are directly supported by a very small group of approximately 25 legal and administrative Chambers staff — spread over the two Branches of the Mechanism and working as a unified team, fully in line with the Council's vision of the Mechanism as one institution.

A number of the rulings from the current reporting period were issued in the major trial and appeal cases currently before the Mechanism. In that respect, I am pleased to report that the retrial in the cases *Prosecutor v. Jovica Stanišić and Franko Simatović* is scheduled to commence next week at The Hague Branch of the Mechanism. The beginning of that trial — the first trial for the Mechanism — represents an important milestone.

The briefings in the appeal cases *Prosecutor v. Radovan Karadžić* and *Prosecutor v. Vojislav Šešelj* were completed in the course of the reporting period, and preparations for appeal hearings in those caes is progressing rapidly. All the judges on those cases, with the exception of myself, continue to work remotely and will be called to the seat of the Mechanism when the cases are ready for hearing. Updated projections with regard to the rendering of a judgment in both cases are set forth in my report.

I should underscore that the judicial work of the Mechanism is not limited to the major cases I just identified. Indeed, the Mechanism is regularly seized of requests relating to everything from allegations of contempt and challenges pertaining to the non bis in idem principle, to motions seeking a review of judgement, applications for early release and requests for access to confidential information. For the most part, those matters are assigned to single judges working remotely and constitute a substantial portion of the Mechanism's judicial activity.

A significant number of those requests are made by national authorities or others engaged in proceedings in national jurisdictions who are seeking access to confidential materials or information held by the Mechanism. Of the 366 decisions and orders issued between mid-May 2016 and mid-May this year, 164 — or approximately 45 per cent — are related to requests for a variety of protective measures and other motions seeking access to confidential evidence or information. We welcome those requests, which reflect the degree to which national authorities are actively seeking accountability for core international crimes.

A crucial component of those national efforts involves the proceedings that have been referred to national jurisdictions for trial and that are being monitored by the Mechanism, in accordance with its statute. In that area, too, there was important progress

over the reporting period, with a trial judgement being delivered in Rwanda in the *Munyagishari* case and, according to information received following the submission of my written report to the Council, the completion of the judicial investigation in France in the *Bucyibaruta* case.

In sum, the Mechanism is making excellent progress with its judicial work in general, all the while continuing to learn from experience and recalibrating internal practices as necessary to ensure optimal efficiency and economy. However, as members of the Council are aware, substantive proceedings in one case — the *Ngirabatware* case — remain at a standstill due to the continued detention of Judge Aydin Sefa Akay by the Turkish authorities.

As Members are aware, the United Nations Legal Counsel formally asserted diplomatic immunity for Judge Akay in October 2016 and, as I reported to the Council shortly thereafter, the failure to resolve the matter in a manner that respected the privileges and immunities of Judge Akay under article 29 of statute of the International Residual Mechanism for Criminal Tribunals places in jeopardy the integrity of the remote model of judging envisaged by the Council under article 8 of the statute. More fundamentally, the failure to properly resolve the matter undermines the principle of judicial independence — the core principle of any judicial institution that abides by the rule of law.

The situation has been further exacerbated over the course of the year by Turkey's failure to comply, without undue delay, with a judicial order issued by the Mechanism in January 2017 to cease all legal proceedings against Judge Akay and to release him. Instead of complying with binding obligations under Chapter VII of the Charter of the United Nations, domestic trial proceedings against Judge Akay commenced earlier this year and have since been adjourned repeatedly.

In two weeks, Judge Akay will have been in ongoing detention for no less than nine months. By any measure, that is an extraordinarily long period for the resolution of the detention of an international judge, whatever the legal complexities may be. The status quo on the matter is untenable, and I call upon the Council to take such measures as may be necessary to achieve an appropriate resolution to that unprecedented situation, consistent with the Mechanism's statute and with the obligations incumbent upon all States under Chapter VII of the United Nations Charter.

I am pleased to report on important developments at the Mechanism in three other areas.

First, as members are aware, the Council has repeatedly expressed concern as to the ongoing situation of acquitted and released persons, and has called upon States to facilitate progress in that area. In that regard, I am very pleased that, after intensive efforts by the former ICTY Registrar, Mr. John Hocking, in December 2016 two such individuals were relocated to a West African State. I am deeply grateful to that State for its collaboration and commitment in response to the call of the Council.

The number of such persons remaining in Arusha has accordingly declined to 11 individuals. Our new Registrar, Mr. Elias, is focused on achieving further progress in respect of this long-standing humanitarian challenge, both in building on existing relationships with relevant States and exploring new opportunities. I urge Council members to continue to support the Mechanism in its efforts to achieve a full resolution of that difficult situation.

Turning to the enforcement of sentences, I am pleased to note that in May a revised agreement on the enforcement of sentences was concluded with the Government of Benin that reflects best practices in the field and cementing further the strong relationship that Benin and the United Nations have enjoyed over many years.

Meanwhile, with the Government of Senegal, we are in the final stages of the implementation of its decision in principle to accept eight prisoners into cells in Senegal that were refurbished with the support of the United Nations. That new capacity will allow for almost all of the remaining 10 prisoners in the United Nations Detention Facility in Arusha to be considered for transfer to serve their sentences. I am deeply grateful for the broad and generous commitment of both of those Governments to work with the Mechanism in the key area of enforcement of sentences and for the sustained support of other Member States that have likewise been faithful partners in that regard.

Finally, I wish to note the commencement by the Office of Internal Oversight Services of preparatory work for its evaluation of the methods and work of the Mechanism, as mandated by the Council in its resolution

2256 (2015). My colleagues and I look forward to collaborating closely with the Office of Internal Oversight Services in its review of the Mechanism's work practices and to making the evaluation report as valuable a document as possible for the Council and for the Mechanism itself.

Today, we — and particularly the members of the Council — face a number of challenges in the realm of international relations. In a number of quarters, we are witnessing a rise in suspicions and doubts concerning global and regional institutions and undertakings. To some extent, we are witnessing a retreat from the shared vision of what the international community, acting together, can achieve.

In many respects, it may all simply reflect the natural ebb and flow of international affairs. We cannot, however, allow a temporary tide to erode any of the vital progress that the United Nations — and, in particular, the Council — has made over the past quarter of a century in strengthening the rule of law and in ensuring greater accountability under and in accordance with international law. Now, perhaps more than ever, is the time to redouble our efforts in that respect, to learn from and build upon the past and strive for ever greater success going forward.

The President (*spoke in Spanish*): I thank Judge Meron for his briefing.

I now give the floor to Mr. Brammertz.

Mr. Brammertz: I thank you, Sir, for this opportunity to address the Security Council on the International Tribunal for the Former Yugoslavia (ICTY) and the activities of the Mechanism for International Criminal Tribunals in Arusha and The Hague.

My Offices continue to be firmly focused on the same priorities, which are expeditiously completing trials and appeals, locating and arresting the remaining eight fugitives indicted by the International Criminal Tribunal for Rwanda (ICTR) and assisting national jurisdictions in investigating and prosecuting war crimes, crimes against humanity and genocide committed in Rwanda and the former Yugoslavia.

In The Hague, in just a few months, the ICTY will complete its mandate and close its doors. Judgements in the two final cases, already mentioned by the President — *Prosecutor v. Ratko Mladić* and *Prosecutor v. Prlić et al.* — continue to be expected by the end of November. The successful completion of those important cases will be a fitting tribute to the long fight for justice that the Council began in 1993.

During the reporting period, my Office made further significant strides in prosecuting the cases transferred from the ICTY to the Mechanism. We successfully prepared and submitted our written arguments in the *Karadžić* and *Šešelj* appeals. We also continued our pre-trial preparations in the *Prosecutor v. Mićo Stanišić and Stojan Župljanin* case. As the President reported earlier, that trial is expected to commence next week. I can assure the Council that my Office will expedite the presentation of its evidence in that case consistent with our duty to prove the charges beyond reasonable doubt.

At the Arusha branch, no trials or appeals are currently ongoing. However, my Office continued to investigate and litigate proceedings arising out of the ICTR's cases that were concluded. During the reporting period, we also commenced a thorough review of the case files against the three fugitives expected to be tried by the Mechanism so as to be prepared to commence those trials as soon as possible following an arrest.

That brings me to our ongoing efforts to locate and arrest the eight fugitives indicted by the ICTR who remain at large. I would like to underscore our commitment to arresting and bringing those fugitives to justice. The victims of the Rwandan genocide deserve nothing less. There are three major developments on which I would like to report today.

First, during the reporting period, we established two task forces, focused on Africa and Europe respectively, to support our fugitive tracking efforts. Those task forces bring our Office together with a number of key partners, particularly INTERPOL and national law enforcement agencies, in an operational structure that will be flexible and responsive. We would like to express our deep appreciation to the Government of Rwanda and the Secretary General of INTERPOL for their strong support to the establishment of those task forces.

Secondly, as a result of our ongoing review, my Office is transitioning to a structure that is more appropriate to our operational requirements. We will take a more proactive approach to our work, which means pursuing new lines of investigations, including financial and telecommunications. That in turn requires the right investigative and analytical capacity.

Finally, my Office is aware that the window of opportunity to locate and arrest fugitives will not remain open forever. At the same time, we recognize the budgetary constraints facing the United Nations, and the Council's expectations in that regard. Quite simply, we recognize that our efforts to locate the remaining fugitives cannot continue forever. Accordingly, in our 2018-2019 budget, my Office is proposing to temporarily increase our resources with the clear understanding that they are time bound. If we do not demonstrate a track record of success over the coming few years, we will have to consider alternatives, which would include the option of fully transferring responsibility for the fugitives to national authorities. We would be grateful for Security Council support for that proposal.

During the reporting period, my Offices continued to assist national judiciaries prosecuting war crimes, crimes against humanity and genocide in Rwanda and the former Yugoslavia. We are providing access to our evidence collection, assisting colleagues with advice on concrete cases, engaging with counterparts to identify challenges and solutions and monitoring developments at both the country and regional levels.

In terms of our efforts, I would like to report briefly on a few examples. We are committed to deepening our cooperation with tRwandan authorities and strengthening the exchange of information and evidence. Accordingly, during the reporting period, we began planning for improvements in our electronic databases to increase the amount of evidence made available to Rwandan authorities and the ease with which they can access that evidence. We are also now discussing with the Prosecutor General of Rwanda the practical steps we can take to ensure better coordination and communication between our offices.

Just a few weeks ago, and together with the Prosecutor General of Rwanda, we conducted a five-day, intensive skills-based training for prosecutors from Rwanda and other East African countries on the investigation and prosecution of war crimes. Through that kind of peer-to-peer capacity-building and knowledge transfer, we hope to better assist our national colleagues in improving the efficiency and effectiveness of their work.

Finally, later this month, my Office will launch the translation of our publication on the prosecution of conflict-related sexual violence at the ICTY into the Bosnian-Croatian-Serbian language. We further plan to prepare a comprehensive training programme for judiciaries in the former Yugoslavia. We hope that national prosecutors and judges can benefit from our work and achieve greater justice for the victims of sexual violence crimes.

I have previously reported that regional judicial cooperation in war crimes justice in the former Yugoslavia is heading in the wrong direction, and, unfortunately, that is still the case today. My written reports (see S/2017/434 and S/2017/436) provide further details on this and other matters in the area of national war crimes justice.

We hope that the relevant national authorities will give our reports full consideration and undertake concrete steps to resolve the significant issues that we have identified. However, today, I am compelled to report on an issue that must be deeply concerning to this Council and the international community — namely, the ongoing, widespread denial of crimes and refusal to accept facts established by the ICTY and ICTR.

The horrors of the conflicts in the former Yugoslavia and Rwanda are recorded in the Council's deliberations and resolutions. All of us remember the images and reports in the media. In order to establish the facts and hold individuals accountable for their crimes, the Council created the ICTY and ICTR. Over two decades of work, independent and impartial international judges, who ensured fair trials and heard immense bodies of evidence, determined the truth of what happened. After what took place in Rwanda 50 years after the Holocaust, a new generation came to understand the meaning of genocide. As the ICTR established, it is a universally known fact that between 6 April 1994 and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group. The conflicts in the former Yugoslavia taught the world a new vocabulary for the horrors inflicted on innocent civilians: ethnic cleansing. In case after case, the ICTY found that throughout the former Yugoslavia, senior political and military officials implemented criminal campaigns of ethnic cleansing.

After the Council first saw the compelling evidence of mass graves around Srebrenica, my Office proved beyond reasonable doubt that genocide was committed in Srebrenica in 1995 through the execution of more than 7,000 Bosnian Muslim men and boys, while up to 30,000 women, children and elderly were forcibly expelled. Yet today, genocide is denied. Ethnic cleansing

is denied. The individual guilt of senior political and military leaders is denied.

A few days ago, the Minister of Education of the Republika Srpska declared that he would ban textbooks that teach students about the recent past, including about the Srebrenica genocide and the siege of Sarajevo. Those facts are taught in classrooms around the world but not in the country where the crimes were committed. Tomorrow night, a ultranationalist singer who has been banned in several countries is expected to perform at a benefit concert in Mostar for the six accused in the case of the *Prosecutor v. Prlić et al.* Such unacceptable provocations, which are but the latest in a very long list, are an insult to the victims, to this Council and to all who believe in justice.

The message of denial and revisionism is loud and clear. They recognize their victims but not the other side's. The other side's war criminals are their heroes. When irresponsible officials use division, discrimination and hate to secure power, conflict and atrocities can gain a logic of their own. That was true two decades ago when the genocide and ethnic cleansing began and it remains true today.

With the closure of the ICTR and the upcoming closure of the ICTY, it is now more important than ever to address that challenge. In order to secure a peaceful future, there must be a shared agreement on the recent past.

In conclusion, the ICTY will complete its mandate before the end of the year. That will close an important chapter that the Council began 24 years ago. Yet, the work of justice for the victims of war crimes in the former Yugoslavia and Rwanda will continue. My Office will expeditiously litigate the small number of remaining trials and appeals before the Mechanism. We will intensify our efforts to locate and arrest the remaining eight ICTR fugitives so that the victims of their crimes can finally see them brought to justice. And, crucially, prosecutions of war crimes, crimes against humanity and genocide must continue in national courts in the former Yugoslavia and Rwanda, which my Office will support. We are grateful for the continued support of the Security Council.

The President (*spoke in Spanish*): I thank Mr. Brammertz for his briefing.

I now give the floor to the members of the Council.

Mr. Rosselli (Uruguay) (*spoke in Spanish*): At the outset, I would like to thank Presidents Carmel Agius and Theodor Meron and Prosecutor Serge Brammertz for their comprehensive briefing on the reports of the International Tribunal for the former Yugoslavia and the International Residual Mechanism for Criminal Tribunals.

Uruguay reiterates its firm commitment to the work of the International Tribunal for the former Yugoslavia and the International Residual Mechanism. Uruguay recognizes the contribution that those institutions have made to international criminal justice, national and regional reconciliation in the countries concerned, and international peace.

With regard to the International Tribunal for the former Yugoslavia, we note with satisfaction the progress of its judicial activities and its adherence to the schedule for completing its judicial work time and achieving its closure by the end of 2017. Likewise, the liquidation activities of the Tribunal are well under way, which is undoubtedly a very good sign.

We share the concern of President Agius over the continuing attrition of Tribunal personnel looking for more stable and durable jobs. We hope that the talks between President Agius and the various authorities of the United Nations will lead to a solution that will allow the most critical personnel to be retained for the proper completion of the Tribunal's work. The temporary and exceptional nature of any measure to be adopted for that purpose should be an element of its favourable consideration.

An issue that deserves our special attention is the situation created around the arrest warrants of Petar Jojić, Jovo Ostojić and Vjerica Radeta, who are accused in connection with the trial against Vojislav Šešelj. President Agius informs us that the arrest warrants have been pending execution since 19 January 2015. In his letter of 1 March 2017, he requested the Security Council to act.

With regard to the International Residual Mechanism, we note with satisfaction the progress that it has made in several of its areas of activity. We share the belief that the Mechanism ought to be devoted to the search and prosecution of the 8 persons indicted by the International Criminal Tribunal for Rwanda who remain fugitives.

The situation surrounding the arrest of Judge Aydin Sefa Akay and its repercussions in the case of *The Prosecutor v. Augustin Ngirabatware*, of which President Theodor Meron has informed the Council on several occasions, most recently in his letter of dated 9 March, is also cause for concern. The State's cooperation is essential if the International Tribunal for the former Yugoslavia and the Residual Mechanism are to comply fully with the mandates bestowed upon them by the Security Council. The mandates refer to no less than imparting international justice and prosecuting and punishing those guilty of crimes against humanity, war crimes and crimes of genocide. It is the responsibility of the Security Council to not allow those institutions to be weakened, since they embody the credibility of the international criminal justice system and are the custodians of the confidence it inspires. The Security Council, collectively or through the actions of its members, must make its best efforts to ensure that the principles essential to the effectiveness of the work of those institutions, as well as their working methods, are respected.

Presidents Carmel Agius and Theodor Meron, as well as Prosecutor Brammertz, have brought to the attention of the Security Council two concrete cases and requested its action. We cannot feign ignorance of the situations at hand. The weakening of the institutions responsible for imparting justice and defending the rule of law, as well as the impunity that may result from that weakening, lead to the repetition of human rights violations and the lack of protection of the victims.

To conclude, we would like to express our gratitude to the Office of Legal Affairs and the Secretariat for their ongoing support for our work in our capacity as Chair of the Informal Working Group on International Tribunals. On a personal note, I wish to underscore the high regard in which we hold the officials of the international criminal tribunals who are with us today. I would also like to express our admiration for the work they are doing to champion international criminal justice.

Mr. Cardi (Italy): I would like to thank the Presidents of the International Tribunal for the Former Yugoslavia (ICTY), Judge Carmel Agius, and of the International Residual Mechanism for Criminal Tribunals, Judge Meron, as well as Prosecutor Brammertz, for their briefings today in this Chamber.

As far as the ICTY is concerned, we welcome the fact that work is proceeding according to plans to ensure completion by the end of 2017. We commend the President and the entire work force of the ICTY for these efforts.

Concerning the Mechanism, we are pleased to see that it is up and running, and functioning effectively. Under the leadership of President Meron, many important steps have been taken, as we have heard, to ensure the effective handling of the wide range of crucial functions with which the Mechanism has to deal. We are ready to support the Mechanism. We are also confident that the remaining tasks in the area of the search for fugitives, relating to the Rwandan cases, and all prosecutions and other proceedings regarding both the International Criminal Tribunal for Rwanda (ICTR) and ICTY are in safe hands with Prosecutor Brammertz at the helm.

I agree entirely with Judge Carmel Agius that we have a collective responsibility to keep building on the legacy of the two ad hoc Tribunals, working with the Mechanism as well as with other international criminal courts and tribunals, including the International Criminal Court (ICC).

The Council as a whole has contributed to the establishment of the age of accountability and must be coherent in upholding its main principles in the face of the many challenges we confront in order to abide by its commitment. Also, in my capacity as Vice-President, in New York, of the Assembly of States Parties to the Rome Statute of the International Criminal Court, I would like to make three additional comments of a general nature.

The first point is on the primary responsibility of States to ensure that justice for war crimes, crimes against humanity and genocide is carried out in accordance with international standards. The international community must provide the necessary assistance and be ready to step in when domestic jurisdictions are unable or unwilling to ensure that justice is done. We must never tire of underlining this crucial aspect of our work, on behalf, of course, of the victims of all the crimes committed.

Secondly, cooperation is an essential element of the functioning of international criminal tribunals. Failing that, such organs would be giants without arms or legs. States must assist the tribunals by lending them their enforcement powers. We note that lack of

cooperation is still an issue of concern at the ICTY and the Mechanism; this is not, of course, a positive sign. The so-called completion strategy is based on the idea that there must be swift cooperation with tribunals and a commitment to the fight against impunity. That fight does not end with the closing of the ad hoc tribunals.

Thirdly, and finally, the Council should assume full ownership of the work done by these subsidiary organs, established in the 1990s, and should incorporate their lessons into its activities. Together with the Secretariat, we need to find ways to have these issues featured more systematically and analysed in greater depth. Accountability must become part of the broader prevention strategy of the United Nations. There is virtually no situation of which the Council is seized that does not require attention in terms of accountability: from Syria to Yemen, from Iraq to South Sudan, from the Democratic Republic of the Congo to the Central African Republic.

We might have different views, but it is precisely for this reason that we should be able to find a forum where we can discuss these different views thoroughly and consider all aspects of justice more systematically. We must not shy away from discussing concerns so long as we have not found viable solutions.

Ambassador Elbio Rosselli of Uruguay, together with his team, have done and are doing an excellent job in steering the work of the Informal Working Group on International Tribunals; I would like to thank him for that and support his call for action. The future should be about continuing this job with a stronger and broader collective engagement with these issues. As long as crimes continue to be committed, and there is abundant evidence that they do continue to be committed, the Council must consider situations including from the angle of accountability and, on the basis of the work done by the ICTY and the ICTR, and now the Mechanism, redouble its efforts to be united in the fight against impunity.

Mr. Akahori (Japan): I would like to thank President Agius, President Meron and Prosecutor Brammertz for their reports (see S/2017/436 and S/2017/434) and briefings. Japan is deeply committed to the rule of law and fully supports the activities of the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals. We commend their role in the fight against impunity.

We welcome the ICTY's steady progress on the closure of the Tribunal at the end of this year, especially regarding the *Mladić* and *Prlić et al* cases. We appreciate the Tribunal's strong commitment to maintaining the projected timeline on these cases despite serious staff attrition. Japan hopes to see the judgments issued this November and appreciates the strong leadership of President Agius.

In order for the Tribunal to function effectively and to perform its mandated tasks, full cooperation by Member States is needed. We are concerned by continued instances of non-cooperation and reiterate that the relevant States must meet their obligations.

Let me now turn to the Mechanism. We are very pleased by the Mechanism's efforts to provide a more detailed projected timeline for its cases, while recognizing that concrete dates are difficult to project at this early stage. Effective and efficient delivery of judgments must be balanced with due process. We appreciate the coordination between the Mechanism and the ICTY's Prosecutor offices to share expertise and experience under the one-office approach.

Arresting the eight remaining fugitives is a priority for the Mechanism. We note the Prosecutor's suggestion on transferring these responsibilities to national authorities in future if the situation does not improve, but we hope that task forces within the Prosecutor's office will lead to arrests as soon as possible.

As with the ICTY, Member States' full cooperation with the Mechanism is required to deliver justice. We welcome the cooperation of a number of States, especially in the area of the enforcement of sentences, and hope to see the transfer completed soon. We take note of the situation with regard to Judge Akay. We hope that it will be resolved as soon as possible.

Before concluding, let me reiterate Japan's support and appreciation for the activities of both the ICTY and the Mechanism. We strongly hope that the work of both organs will bolster the rule of law and help victims see justice.

Mr. Zagaynov (Russian Federation) (*spoke in Russian*): We have attentively studied the reports of the leadership of the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals (see S/2017/436 and S/2017/434, respectively) on the past six-month period. We note that as stated in the report of the ICTY,

judicial proceedings are under way on schedule and will be completed in November 2017. We call on the Tribunal's leadership to make every effort to reduce these timetables, as has been repeatedly called for by the Security Council, particularly in resolutions 2193 (2014), 2256 (2015) and 2329 (2016).

Although the ICTY has entered the final stage of its operations, everything possible must be done to address the imbalances that have accrued in the past few years. They discredit the very idea of international criminal justice. We have discussed them at length in the past. This certainly does not have to do only with a failure to comply with the rules about the duration of trials and pre-trial detention. In particular, we reject attempts to put forward assessments that implicitly place blame for crime on peoples, Governments and others, thereby creating certain biases. The Tribunal must operate on the basis of the core principle of criminal law, namely, that criminal responsibility is individual in nature. The role of establishing guilt vis-à-vis specific individuals was assigned by Security Council to the Tribunal, and we cannot go outside this framework.

Our delegation is deeply disheartened by the refusal of the ICTY Trial Chamber to grant the request of Ratko Mladić for provisional release on humanitarian grounds so that he could receive medical treatment in Russia. Information about the significant deterioration of the health of Ratko Mladić was ignored, as was the guarnatee of his timely return to The Hague and compliance with other conditions that might be put forward by the Trial Chamber. Related safeguards and the assurances were also rejected. The judges refused to give the individual the opportunity to receive highly qualified medical assistance at a stage of the trial that did not require his individual presence. Previously the Tribunal had agreed to provisionally release individuals who were present with less weighty circumstances. Of course, the ICTY bears full responsibility for this decision and its potential repercussions.

We have repeatedly voiced concern about the quality of medical treatment of ICTY indictees. Once again, we call for an investigation into the operation of the medical unit of detention facilities of the ICTY by the Office of Internal Oversight Services. We trust that this investigation will take place promptly.

On the whole, our assessments of the operations of the ICTY, including staffing issues, have been voiced during previous meetings, and we will certainly not repeat them. However, we would mention that the contempt case must not influence the trial nor the Tribunal's closure dates, and consideration of the issue of inclusion of the Council in this matter is something that we continue to believe is unsubstantiated, especially in the light of previous practice in similar cases.

Briefly, on the work of the Residual Mechanism, we are closely following the trials, particularly in the light of the negative experience of the ICTY. The Mechanism, which was established pursuant to resolution 1966 (2010), has a limited mandate with regard to both the substance of its functions and the duration of its operations. For this reason, it is officially referred to as a Residual Mechanism.

The mandate of the Mechanism hinges on biannual Security Council review cycles of its activities. We believe that the Mechanism must not overstep its mandates. In particular, it must not analyse mindsets in a given country or historical views or, for example, prospects for European integration. We call for avoiding getting sidetracked by issues and tasks unrelated to the Mechanism's mandate. They draw attention from attaining the goals set forth by the Charter and Council resolutions.

We trust that officials in the Mechanism will plan the course of criminal trials and other statutory activities in a qualitative manner. We anticipate sound forecasts, maximum effectiveness, transparency, efficiency and strict compliance with standards of justice, including the duration of proceedings and schedules. The Mechanism has all procedural and other capacities to that end at its disposal.

Ms. Sison (United States of America): The United States extends its sincere appreciation to President Meron, President Agius and Prosecutor Brammertz for their briefings today on the ongoing work to achieve justice for victims of the vicious atrocities committed in the former Yugoslavia and Rwanda that stained the history of humankind. As we look towards December and the anticipated closure of the International Criminal Tribunal for the Former Yugoslavia and the merging of essential functions with the Mechanism for International Criminal Tribunal, the United States wishes to underscore that it remains as committed to the work of the Tribunal as it was when it was established nearly a quarter-century ago.

The completion of the Tribunal's mandate is essential. We applaud the completion of trial

proceedings in the case of *Prosecutor v. Ratko Mladić* and look forward to the delivery of a judgement later this year. While we can never undo the horrors of war, bringing cases to their conclusions, as was done last year when former Republika Srpska President Radovan Karadžić was found guilty and sentenced to 40 years in prison for genocide, crimes against humanity and violations of the laws and customs of war, goes a long way towards closing a dark chapter of history and creating a legacy of showing would-be perpetrators of atrocities elsewhere in the world that they cannot act with impunity.

The United States has consistently emphasized that the Tribunal and the Mechanism establish facts through judicial process. This process is critical to countering those who seek to distort facts, revise history, engage in genocide denialism or rewrite reality. The United States continues to be greatly concerned about the detrimental impact of increasingly divisive political speech in the region on the pursuit of justice for war crimes committed in the former Yugoslavia. Such inflammatory rhetoric harms regional cooperation among the States of the former Yugoslavia, which is essential to promoting accountability for war crimes. In this regard, the United States would like to express our sincere appreciation for the contribution of these Tribunals, including the Office of the Prosecutor, to developing a historical record of the facts to counter those who seek to deny the nature of the widespread crimes, including genocide, that took place.

The kinds of hateful ideologies that led to these horrific acts persist to this day, and together we must continue our efforts to relegate them to the past. The United States also remains concerned that three arrest warrants for individuals charged with contempt of court in relation to witness intimidation in the case of *Prosecutor v. Vojislav Šešelj* have remained unexecuted in Serbia for nearly two and a half years. Cooperation with the Tribunal is an ongoing, binding obligation. The United States calls on Serbia to execute these arrests without further delay, and we look to the newly-appointed Serbian war-crimes prosecutor to play a constructive role in that process.

The Security Council should be unified in the message to Serbia that failure to fully cooperate with the Tribunal in accordance with its statutes and the resolutions of the Council compromises the core functions of the international justice system and must be addressed with appropriate urgency. The United States commends the ongoing work of the Office of the Prosecutor to reshape the fugitive-tracking programme, so that the eight remaining fugitives from the International Criminal Tribunal for Rwanda may be swiftly located, arrested and brought to justice.

We are happy to see these changes. This effort is not window dressing. The restructuring that has been done appears capable of having a significant impact on tracking efforts, both by improving information-sharing and placing a renewed emphasis on timely and effective intelligence and analysis. We remain committed to the apprehension of the remaining fugitives and look forward to engaging with the two new Task Forces focused on Africa and Europe in this effort. We call on all States, especially those in the Great Lakes region, to cooperate with efforts to apprehend these fugitives. To that end, the United States continues to offer a reward of up to $5 million for information leading to the arrest or transfer of these eight men.

With regard to management and the transition, the United States appreciates the careful planning and ongoing work of both the Tribunal for the former Yugoslavia and Mechanism Registrars to navigate a complicated issues during this period of transition for both institutions. We are happy to hear of the significant progress made to downsize offices and reduce costs, as the Tribunal looks to close at the end of the year. We also note the ICTY's concerns about staff attrition and we thank it for its considerable efforts to retain core staff, including by providing training and making other accommodations, and urge it to continue these initiatives. We are grateful for the personal and professional sacrifices the staff of both Tribunals have made.

In addition, we are glad to hear that the four audit reports of the Mechanism, issued by the Office of Internal Oversight Services during the reporting period, found satisfactory management and controls and that the Mechanism is striving to take necessary actions where recommendations for improvement were made.

The United States remains deeply concerned that the mechanisms case work is being severely impaired due to the situation of Judge Aydin Sefa Akay. We continue to emphasize the need for this matter to be resolved fairly and expeditiously. The mandate of the Tribunal may be nearing an end, but its work to end impunity and promote justice will be enduring. Even more, the work of the Mechanism and Tribunal reminds

us daily of the critical need to seek accountability where atrocities against civilians have so far been met with impunity in places like Syria and South Sudan.

Mr. Ciss (Senegal) (*spoke in French*): The Senegalese delegation is grateful to the Bolivian presidency of the Security Council for having a organized this briefing on the International Criminal Tribunals and the International Residual Mechanism for Criminal Tribunals. I would like to thank in particular Judge Carmel Agius, President Theodor Meron and Prosecutor Serge Brammertz for their comprehensive reports (see S/2017/434 and S/2017/436) and for their briefings on the work of the Tribunals and on the completion strategy for their work.

I take this opportunity to also wish the new Registrar, Mr. Olufemi Elias of Nigeria, every success. He is joining the Mechanism at a crucial juncture in its transition and in the transfer of functions and responsibilities from the International Tribunal for the Former Yugoslavia (ICTY) to the Mechanism. My delegation would also like to congratulate Ambassador Elbio Rosselli, Permanent Representative of Uruguay, and his entire team for their remarkable work as Chair of the Informal Working Group on International Criminal Tribunals.

In reading through the reports, we are very satisfied to see the headway that is being achieved in dealing with pending cases, particularly the fact that a new trial will soon be opened in the case of *Stanišić and Simatović*, which should begin on 13 June. We also welcome the fact that preparations are under way for the appeal of Mr. Karadžić and Mr. Šešelj. The beginnings of these cases and appeals is an important step forward. Moreover, my delegation acknowledges the importance of legal responsibility and welcomes the adoption of a professional code of conduct for the judges of the Mechanism, although we note that there are no provisions for sanctions within that professional code of conduct should a judge fall short of the content therein. This shortcoming has already been pointed out by the Office of Internal Oversight Services in its 2016 evaluation report of the ICTY and deserves to be addressed quickly.

We welcome President Meron's decision to have his Office review the possibility of establishing an enforcement mechanism allowing for the implementation of a code of ethics that will take into account the evolution of international practice in this area. However, we note that certain questions remain pending, namely, that the issue of staffing, issues related to cooperation and arrest warrants, the search for fugitives found to be guilty by the International Criminal Tribunal for Rwanda, the reintegration of acquitted or released individuals after they have served their sentences, the optimal use of financial and administrative resources and the issue of the archives have not yet been fully resolved. These are issues that are of concern to all of us and deserve our attention. We also appeal to States, particularly those in which the fugitives might have taken refuge, to redouble their efforts to apprehend them and to ensure that they can stand trial.

Turning our attention now to the matter of Judge Aydin Sefa Akay, we welcome the efforts of the Office of Legal Affairs and the Informal Working Group to seek a happy conclusion to this matter and we welcome all cooperation lent by Turkey. We call upon all parties involved to keep the channels of dialogue and consultation open in order to find a swift solution to this matter.

We acknowledge the key role played by the International Criminal Tribunals and the work done by the officials who lead them. We reiterate our support to them. I also assure them of the tireless support of my country to upholding the principle of the independence of justice.

We would also like to pay tribute to the significant contribution by the Tribunals to international justice with regard to crimes against humanity, war crimes and crimes of genocide, as well as to accountability and reconciliation efforts. That is why Senegal is firmly committed to being responsible for the eight cells that have been refurbished by the International Criminal Tribunal for Rwanda in accordance with international prison standards and to making them fully operational. I would like to assure the Mechanism's authorities that the related administrative procedures are in their final stages.

Mr. Li Yongsheng (China) (*spoke in Chinese*): China thanks President Agius, President Meron and Prosecutor Brammertz for their briefings on the work of the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals.

Over the past six months, the ICTY has continued to make it progress in all aspects of its work. Under the

leadership of President Agius, it has overcome many difficulties, including staff attrition, and implemented in earnest the relevant Security Council resolutions in a tireless effort to wrap up its judicial work before the end of November. China commends the ICTY on its work and hopes that it can redouble its efforts during the remaining months to ensure the timely completion of its judicial work and its closure before the end of the year. The Tribunal has begun to plan closure-related events. China will consider sending people to attend these events.

Over the same period, the International Residual Mechanism for Criminal Tribunals, under the leadership of President Meron, has made continued progress with the beginning of the *Stanišić and Simatović* trial case in June and the ongoing *Karadžić* and *Šešelj* appeal cases. The Residual Mechanism has issued 152 decisions and orders and conducted its judicial activities in an orderly fashion. It has adopted measures such as remote judging, double hatting and single judge adjudication to meet the requirement of being small, temporary and efficient. It has also successfully reintegrated one person who was acquitted and one person who was released.

China commends the Residual Mechanism for its progress over the past six months. We expect the Mechanism to continue its strict implementation of resolution 1966 (2010) and other relevant resolutions of the Security Council, as well as the statute of the Mechanism, and to diligently discharge its duty so as to ensure steady, orderly and efficient progress in its work on all fronts.

The ICTY will close before the end of the year. China expects it to wind up its work in a smooth and efficient manner. We hope that the ICTY will collaborate closely with the Residual Mechanism in order to effect a smooth transfer of the remaining work from the former to the latter. China will continue to support both institutions.

Finally, China would like to express its appreciation to Uruguay, as Chairman of the Working Group on International Tribunals, and the Office of Legal Affairs for the excellent work they have done.

Mr. Moustafa (Egypt) (*spoke in Arabic*): At the outset, I would like to extend my thanks to Judge Meron, Judge Agius and Prosecutor Brammertz for their briefings. We have carefully reviewed the contents and considerations of the two periodic reports (see S/2017/434 and S/2017/436). I would like to commend the progrees made in the implementation of the mandates of both Tribunals and to underscore our support of their efforts to complete their mandates, as scheduled.

The Security Council established the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) to uphold the principles of justice and the rule of law, to demonstrate the sincerity of the international community in addressing war crimes and crimes against humanity, to ensure that the perpetrators are held accountable for their actions and to anchor the principle of zero impunity at the international level. The two Tribunals have played a commendable role in that respect and will continue to do so through the International Residual Mechanism for Criminal Tribunals in Arusha and The Hague. In that connection, we salute all efforts to ensure a smooth transition and handover. The mandate of the ICTY is drawing to a close. The Council's support of the Tribunal is essential if it is to optimally fulfil its mandate and duly finalize the cases of which it is seized.

We urge Member States to continue cooperating with the Registry of the Tribunal in accordance with its mandate, as outlined in its Statute. In that respect, I wish to underscore the need to use all available financial and administrative resources effectively in order to facilitate the work of the Residual Mechanism and the ICTY, as required.

The International Criminal Tribunals are an important tool for the international community in the administration of justice and the punishment of those responsible for serious violations of international humanitarian law. The experiences gained and the lessons learned from the ICTR, the ICTY and the International Residual Mechanism, therefore, merit consideration as a reference for the future. We must build on the positive aspects and avoid any failures or shortcomings.

In that respect, the Office of Internal Oversight Services, in accordance with the mandate of the Council, reviews the working methods of the Mechanism and reports thereon, as it did with regard to the ICTY. That serves our objectives, but it is important for the group responsible for the review, whether at the assessment or recommendation level, to pay heed to the nature of the Mechanism as a judicial institution and to ensure a balance between improving administrative

performance and efficacy, on the one hand, and not to prejudice the independence of the international judges, on the other.

Therefore, seeking the help of seasoned, experienced judges as part of the group responsible for the review is essential to fully understanding the nature of the work of the Mechanism. In that respect, agreement on a reference methodology for such reviews will facilitate communication between the Office and the Mechanism, while preparing future reports. That will have a positive bearing on the nature of outcomes and their implementation when the Council establishes similar tribunals and mechanisms in the future.

In conclusion, I would like to note that Egypt continues to follow the case of the detention of Judge Aydin Sefa Akay in Turkey on the grounds of certain accusations made against him. We look forward to arriving at a satisfactory solution that preserves the dignity and independence of the international judiciary and is in line with the rules of international law and the Charter of the United Nations.

Mr. Vitrenko (Ukraine): We too would like thank today's briefers for their extremely important contribution to this meeting and to assure them of Ukraine's full support. I would also like to extend a warm welcome to the Deputy Prime Minister and Minister for Foreign and European Affairs of the Republic of Croatia.

We would like to commend the steady progress that the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals have made since December 2016 in litigating trials and appeals, reforming and strengthening efforts to locate and arrest the remaining International Criminal Tribunal for Rwanda (ICTR) fugitives, assisting national jurisdictions in prosecuting international crimes committed in Rwanda and the former Yugoslavia.

Unfortunately both institutions are experiencing problems and challenges in performing their mandates. There is a challenge of staff attrition, along with the added pressure to meet deadlines in anticipation of the planned closure of the ICTY and to ensure a smooth handover of remaining issues to the Mechanism. Although they are natural and hardly avoidable under the circumstances, we hope that those difficulties will not affect the operational capabilities of both institutions at this important stage of their work.

Yet there are challenges of quite a different nature. The need for States to cooperate with international criminal courts and tribunals is constantly stressed, including in the unanimously adopted resolution 2329 (2016). That is why we are concerned that States' non-compliance with tribunals' orders remains an outstanding issue that impedes their efficient work. We are therefore particularly concerned about Serbia's defiance of the Tribunal's arrest warrants and orders to surrender three indictees to the Tribunal's custody. We call upon that country to comply with its obligations under article 29 of the ICTY statute and respective Security Council resolutions to render all necessary assistance to the Tribunal.

It is of the utmost importance for international justice and crime prevention that all cases before the Tribunal are completed by the time its activities are concluded. It is imperative to send the strong message that no one can avoid accountability for serious violations of international humanitarian law. In that respect, we welcome INTERPOL's issuance in March of Red Notices in relation to pending warrants.

We urge all States to cooperate with the ICTY and the Mechanism and to respect their mandates in line with obligations under relevant Security Council resolutions. Courts cannot deliver justice by themselves. The international community must be consolidated in its support of the Criminal Tribunals' work to ensure the right to universal justice for all victims of mass atrocities.

Let me touch upon another technical but critical part of the current stage of the Tribunal's liquidation-related activities. We have seen strong commitment to a timely and efficient accomplishment of that task. We are satisfied with the downsizing process, the transfer of assets and contracts to the Mechanism, as well as records and archives of the Tribunal. With regard to the Mechanism, my delegation commends its judicial activities and the issuance of more than 150 decisions and orders during the reporting period, including through the remote procedure. We also support continuing efforts in reducing the costs and streamlining the internal working methods and processes to ensure efficient and transparent work by the Mechanism.

In conclusion, we would like to hail successful events held as part of the ICTY legacy dialogues series and the launch of an enhanced version of the Mechanism's website. The knowledge and expertise of

international criminal tribunals should be accessible to a wider public, thus contributing to efforts to maintain international peace and deliver justice around the world.

Mrs. Gueguen (France) (*spoke in French*): I thank President Agius, President Meron and Prosecutor Brammertz for their very comprehensive briefings.

France reiterates its gratitude and support to the entire staff of the International Tribunal for the former Yugoslavia (ICTY) and of the International Residual Mechanism for Criminal Tribunals for their efforts in conducting successful judicial proceedings. Although the ICTY is now in its final year of operation, it is extremely important that it continue to be supported by its entire team until the very end. As the Mechanism strengthens, it is also important for us to ensure that the model adopted by the Security Council and the tools and resources provided to enable it to effectively discharge its duties with reduced costs, are sustainable.

We commend President Agius's firm commitment to staying the course and completing the work of the ICTY in 2017. The confirmation of the very good progress made in the most recent proceedings at both the first instance and appeal stages, as well as the start of liquidation-related activities, is in line with the expectations of the Security Council when it extended the Tribunal's mandate for the final time through resolution 2329 (2016).

The Tribunal will close its doors this year. France commends the ICTY for its tremendous work in advancing reconciliation and peace — a process that is still under way for the peoples of the region. An overall review should also be conducted this year to assess progress made and identify good practices and areas in which improvements can be made in dispensing justice more effectively. We know that the ICTY's experience is vital. The ICTY would be the first Tribunal to share its experience with other international judicial institutions. The legacy of the ICTY must be preserved and maintained in order to strengthen international criminal justice, as a whole. France will participate in the events planned for the closure of the ICTY, which will be held in New York at the same time as the opening session of the Assembly of States Parties to the Rome Statute of the International Criminal Court.

As the ICTY nears the completion of its work, France reiterates that, now more than ever before, States of the region are responsible for cooperating fully with the Tribunal, in accordance with the relevant resolutions of the Security Council. Such cooperation extends to the Mechanism. We call on all States to do their utmost to ensure that the eight fugitives indicted by the International Criminal Tribunal for Rwanda (ICTR) are arrested. We support the efforts of the Prosecutor to restructure his teams and to strengthen cooperation with his partners. All individuals suspected of committing crimes during the genocide in Rwanda must be brought to justice. In that regard, France recalls that cases referred in 2007 by the ICTR are still ongoing and are the subject of regular discussions with the Prosecutor of the Mechanism, as well as with the Mechanism's specially appointed observer.

During this pivotal year, my delegation reiterates its full support for the smooth transition to the Mechanism and welcomes the fact that the ICTY and the Mechanism assist each other, taking into account, in particular the ICTR's experience in handing over functions to the Mechanism. France welcomes President Meron's determination to rely on the good practices of the ICTR and the ICTY in prosecuting cases and in working with the Mechanism. In that regard, my delegation reiterates the importance of the recommendations put forward by the Office of Internal Oversight Services in the review of the ICTY conducted in 2016 and calls on the Mechanism to follow those recommendations with regard to its operations, developing a code of ethics and establishing a disciplinary mechanism for judges. France would also like to recall that the diversity of legal systems, which we know President Meron holds dear, is a factor in the success of the mission of the Mechanism and of all international criminal courts.

Finally, France reiterates its support for the activities of the ICTY and the Mechanism that seek to build national judicial capacity. Such actions are an invaluable contribution to the fight against impunity and access to justice throughout the world. We welcome the training courses envisaged in the Central African Republic, which would bolster the Special Criminal Court. We encourage the Mechanism to continue those activities.

The Security Council decided to establish international criminal tribunals in the 1990s because it believed that the States concerned and their citizens would be their primary beneficiaries through the gradual strengthening of the rule of law, which ensures the independence of the judiciary and acknowledges full accountability.

Mr. Tumysh (Kazakhstan): My delegation thanks President Agius, President Meron and Prosecutor Brammertz for their updates.

Kazakhstan notes with satisfaction the progress achieved over the past six months in the work of the International Tribunal for the Former Yugoslavia and in the effective implementation of the strategy for the Tribunal's closure, despite the continued serious issue of staff attrition. We appreciate the leadership of President Agius in his efforts to ensure the proper functioning of the Tribunal under the difficult circumstances. We hope that the various challenges encountered will not be a setback in the Tribunal's timely completion of the trials of the remaining pending cases. In addition, it is imperative that effective solutions be found for the existing administrative issues facing the Tribunal.

My delegation closely follows the work of the International Residual Mechanism for Criminal Tribunals and hopes that all efforts to assist the victims of some of the most inhuman of crimes will be carried out successfully.

We see the value of the significant role played by the international judicial and quasi-judicial bodies in preserving our faith in international law and in inevitably punishing the perpetrators of serious crimes. Kazakhstan commends the respect for and strict adherence to the important principles of objectivity, independence and impartiality that the Tribunal followed in conducting its work.

Finally, my delegation would like to thank Ambassador Elbio Rosselli, Chair of the Informal Working Group on International Tribunals, and the Permanent Mission of Uruguay for their tireless efforts and diligent dedication to their duties on behalf of the Council.

Ms. Guadey (Ethiopia): I would like to start by thanking the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron; the President of the International Tribunal for the Former Yugoslavia (ICTY), Judge Carmel Agius; and the Prosecutor of the ICTY and the Residual Mechanism, Prosecutor Serge Brammertz. I would also like to thank Ambassador Elbio Rosselli for his efforts and leadership as Chair of the Informal Working Group on International Tribunals.

We believe that the process of truth, justice and reconciliation is important for peacebuilding, restoring the rule of law, fighting impunity and ensuring accountability, as well as for supporting victims in post-conflict societies. In that regard, we acknowledge the significant contributions made by ICTY, the International Criminal Tribunal for Rwanda (ICTR) and the Residual Mechanism.

In relation to the ICTY, we appreciate the work undertaken during the reporting period to ensure a smooth transition from the Tribunal to the Residual Mechanism, including in the context of liquidation, downsizing and transferring records to the Residual Mechanism. We welcome the work of the Tribunal's Judge and its staff and their dedication to concluding all judicial activities and complying with the completion strategy, which outlines its closure by the end of 2017. We also welcome the resource-sharing arrangement between the Office of the Prosecutor of ICTY and the Mechanism under the one-office approach, as it enables the Tribunals to address their challenges in relation to staff attrition. Such measures taken by the ICTY will increase its efficiency and lead to the possible completion of pending cases, as well as its fulfilment of its commitment to ending its work by the end of 2017. Furthermore, we commend the collaboration between the Office of the Prosecutor of the Residual Mechanism and the ICTY, as well as national judicial authorities in relation to access to information and evidence. Such collaboration would support the proceeding of the relevant national courts and enable public prosecutors to bring to justice persons who have committed serious crimes under international law.

With regard to the Mechanism, we appreciate its work in relation to follow-up cases referred to national courts, as well as the Mechanism's enforcement of sentences. We have noted from the Prosecutor's report (see S/2017/434, annex II) that the Mechanism continued its double-hatting arrangement with the ICTY during the reporting period. In our view, such an arrangement will enable it to function as a small, temporary and efficient tribunal. We also welcome the cooperation between Senegal and the Mechanism, which has facilitated the enforcement of sentences of prisoners of the ICTR, and the work that has been achieved in relation to that cooperation.

While welcoming the cooperation of Member States in relation to the relocation of acquitted and released prisoners, we note with concern the challenges raised in the report in relation to the lack of comprehensive solutions regarding the resettlement of released and

acquitted persons. In that regard, we note the reports of the early release in recent years of more than 14 persons convicted for genocide-related crimes, based on early-release arrangements without proper consultations with the Office of the Prosecutor, the victims or the country concerned. We are of the view that such practices do not seem to be commensurate with the gravity of the crimes committed. It may have grave implications for the victims when, in many cases, the mindset that gave rise to the crimes committed has not been abandoned, as indicated in the Prosecutor's report. Therefore, we would like to encourage the President of the Residual Mechanism to continue his dialogue with Member States, including in the context of the Informal Working Group, to find a durable solution to the challenge at hand. We have noted that the report raises the issue related to Judge Akay. We would like to encourage the Mechanism to work in cooperation with the Government of Turkey to resolve the matter.

We have noted the challenges raised in the reports of the ICTY, the Mechanism, as well as the reports of the Office of the Prosecutors of the ICTY and the Residual Mechanism in relation to the trafficking of fugitives and a lack of cooperation. The continued cooperation and assistance of Member States with the ICTY in its remaining period is critical for the successful completion of all cases before the Tribunal and a smooth transition to the Mechanism. It will aiso be absolutely necessary in the conlusion of pending cases with the time frame outlined in resolution 1966 (2010).

To conclude, I would like to underscore the need for the Mechanism, the ICTY and the Office of the Prosecutors of the ICTY and the Residual Mechanism to continue their dialogue and cooperation with Member States in fulfillment of their functions and completion of pending cases, including through tracking the remaining eight at-large fugitives.

Ms. Schoulgin-Nyoni (Sweden): I would like to express my appreciation for the comprehensive briefings and reports on the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals by President Carmel Agius, President Theodor Meron and Prosecutor Serge Brammertz. Let me also welcome the presence of His Excellency the Prime Minister and Minister for Foreign Affairs of Croatia.

The role that international criminal tribunals have played in the fight against impunity for the most horrendous crimes, such as genocide, crimes against humanity and war crimes, cannot be overestimated. By acknowledging and recognizing the trauma that remains after conflicts have ended, and by providing a framework to hold those responsible to account, their work has helped rebuild the foundations for affected societies so that they can move forward. Ensuring justice in the aftermath of conflict is essential for healing the wounds of war and to sustaining peace. Holding perpetrators to account in international or national courts is key to national reconciliation.

We welcome the fact that the two remaining cases before the ICTY, those of Ratko Mladić and the appeals case Prlić et al, will be concluded in November. As we move towards the conclusion of the ICTY's mission, we welcome President Agius' plans for a structured and timely transition to the Residual Mechanism. We would like to takethis opportunity to thank the staff of ICTY for their invaluable contributions to international justice. We would also like to recognize the efforts of President Agius to lead his team until the completion of all of the Tribunal's work.

It is important that there be no outstanding cases at the time of the ICTY's closing. We urge Serbia to cooperate fully with the Court, as it has done on other occasions. We call on itto carry out the three arrest and surrender orders pending since January 2015. Denying the reality of what happened in the past will only undermine prospects for peace in the future. We therefore share the Prosecutor'ss deep concern about widespread denial of crimes and facts established by ICTY in relation to its cases, which could have real consequences for reconciliation in the Western Balkans. Making a decisive and irreversible break with the past can happen only when there is truth and accountability.

We look forward to a smooth and effective transition from the ICTY to the Residual Mechanism. In that regard, we are encouraged by reports that ICTY and the Residual Mechanism are considering lessons learned from the transition of the International Criminal Tribunal for Rwanda (ICTR) a few years ago. We welcome the work already under way by the Residual Mechanism.

It is commendable that the Residual Mechanism issued over 150 decisions and orders during the reporting period. It has made good use of its flexible organization. The system of distance judges has proven cost-effective and efficient. We appreciate the conscious effort to

ensure gender balance within the Residual Mechanism, as well as the appointment of specific focal points on, for example, inclusion, gender and issues related to lesbian, gay, bisexual or transgender persons.

Finally, it is of concern that eight individuals indicted by the ICTR for serious crimes remain at-large. We encourage all States to cooperate fully with the Residual Mechanism for the speedy arrest of those individuals. We also encourage all States to assist the Residual Mechanism in carrying out its mandate, including by ensuring that its personnel are not hindered in performing their duties.

Ms. Mulvein (United Kingdom): I should like to thank the Presidents of the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals and the Prosecutor for their reports (see S/2017/436 and S/2017/434) and their presentations.

At the outset, let me reiterate the United Kingdom's continued support for the ICTY and the Mechanism and for all that they do to end impunity for the most serious international crimes.

As the ICTY progresses through its final year, the international community as a whole must continue to support the Tribunal so that it leaves behind a continuing and enduring legacy. Completion of its judicial work remains the priority. We welcome the fact that the Tribunal remains on track to deliver its final judgments in the cases of *Mladić* and *Prlić et al* before the end of the year. Let me commend the work of the judges and staff as well as the Tribunal's efficiency measures, such as the prosecution's "one office" policy, which have made this possible. We also pleased that the transfer of residual functions from the ICTY to the Mechanism remains on track.

We are, however, very much aware of the challenges that the ICTY faces. We share the Tribunal's concern over continued stuff attrition, and we welcome the measures taken to address this issue. We hope that staff will feel able to see their work through to the finish.

The United Kingdom is very concerned that more than two years on, the arrest warrants for the three individuals in the *Jojić et al* contempt case have still not been executed. We strongly urge Serbia to cooperate fully with the ICTY in all respects, including complying with its international obligations in this matter. Failure to do so risks undermining the central principles of international justice and the rule of law by allowing those suspected of interfering with witnesses to avoid accountability.

It is essential that the ICTY's vast experience and lessons learned not be lost. Its legacy must reflect its achievements and make a lasting contribution to regional peace and stability. We are therefore pleased to note its forward-looking approach to maximizing digital outreach and transforming the ICTY's website into a permanent repository for the Tribunal's digital legacy.

The legacy of the ICTY should be a clear and resounding message to those who commit such crimes that they cannot escape justice. Whether it takes two years or 20, history will eventually catch up with them.

With regard to the Mechanism, we note that it has entered an important phase, shortly commencing a retrial in Stanišić and Simatović and undertaking complex appeals in *Karadžić and Šešelj*. We look forward to the Mechanism's continuous, expeditious and efficient treatment of these cases and to receiving updates as they progress.

We remain concerned at the fact that the situation of Judge Akay has not yet been resolved and by consequent ongoing delays in the *Ngirabatware* case. We hope that a pragmatic resolution can be found as quickly as possible.

We fully support coordination between the Prosecutor's Office, national enforcement agencies and INTERPOL with regard to apprehending the eight remaining fugitives, and we welcome the Prosecutor's initiatives to improve tracking activities. We hope that they can be brought to justice soon, and we urge all States to cooperate to this end.

We also welcome the relocation of two further acquitted and released persons from Arusha and support the Mechanism in its ongoing work in this respect, recognizing the challenges.

In addition to the work of the Mechanism and the ICTY, there can be no doubt that effective national prosecutions are vital in achieving justice for the victims of atrocities and holding perpetrators to account for their crimes. So we are troubled by the Prosecutor's report for the ICTY that regional judicial cooperation is moving in the wrong direction. It is imperative that all States work together to achieve justice. We strongly urge all relevant authorities to initiate discussions immediately so as to remove any barriers to

investigating and prosecuting the most serious crimes of international concern, and we call on regional States to work with the Office of the Prosecutor to develop practical proposals to improve the situation as soon as possible. Individuals suspected of war crimes cannot continue to be shielded from justice simply by virtue of their location.

We are also deeply disturbed by the Prosecutor's reports, both for the ICTY and the Mechanism, of denial of crimes, in particular genocide and revisionism. If such crimes are to be prevented in future, it is essential to accept the ICTY and Mechanism findings and rulings on the tragic events of the not-so-distant past.

The President (*spoke in Spanish*): I shall now make a statement in my capacity as representative of the Plurinational State of Bolivia.

Bolivia welcomes the reports of the President of the International Tribunal for the Former Yugoslavia (ICTY), Judge Carmel Agius; the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron; and the Prosecutor of the ICTY and the Mechanism, Mr. Brammertz (see S/2017/436 and S/2017/434). We take this opportunity to convey our support to them in carrying out the work entrusted to them.

We also express our gratitude for the work done by Ambassador Rosselli and his team in his capacity as Chair of the Informal Working Group on International Tribunals. We also thank the Office of Legal Affairs for its support and cooperation in connection with facilitating the work of the Informal Working Group.

It is important to underscore that the establishment of the International Tribunal for the Former Yugoslavia, through resolution 827 (1993), of 25 May 1993, and of the International Criminal Tribunal for Rwanda, through resolution 955 (1994), of 8 November 1994, have contributed significantly to justice through the fight against impunity and have played a key role in restoring the rule of law in the countries of the former Yugoslavia and in Rwanda.

In the more than 20 years that both Tribunals were up and running, the international community saw that they represented a key element in the quest for justice. As they have done a great deal of work, the Security Council must provide them the necessary support so that they can conclude their mandate, and also urge the Mechanism that it assist in this process in the best possible conditions.

Against this backdrop, and in order to ensure that the Tribunal can fully discharge the mandate conferred upon it by the international community and complete the remaining cases by December 2017, as set out in the completion strategy, it is vital that all States cooperate with its work.

We listened very carefully to the update on Judge Aydin Sefa Akay, which is a very delicate case when it comes to the work of the Mechanism. We hope that a swift resolution to this issue can be found. We also pay tribute to the dedicated work of the staff of the Tribunal through the lifetime of its mandate and reiterate that its cooperation and assistance will be key also during its drawdown period. We deem it important to ensure that the Tribunal has the resources necessary to facilitate the work of the Mechanism and the closing of the Tribunal.

We stress and welcome the work done in terms of preserving the Tribunal's legacy through dialogues with academia and with the general public, as was done in Bosnia and Herzegovina and in Croatia. We believe that those awareness-raising activities are clear testimony of the efforts made by the Tribunal to ensure the right to truth, justice, reparations for harm caused, keeping memories alive and most of all to ensure that such events are never repeated, and that in all circumstances dialogue and conciliation should be used to resolve conflicts, as set out in the Charter of the United Nations.

Finally, Bolivia looks forward to the events that will take place in December both in The Hague and in New York prior to the closure of the Tribunal, as well as the high-levels symposiums that will mark the end of 24 years of work.

Bolivia is firmly committed to the fight against impunity and to the maintenance of international peace and security, which are the cornerstones of the Charter of the United Nations.

I now resume my functions as President of the Security Council.

I now give the floor to the Deputy Prime Minister and Minister for Foreign and European Affairs of Croatia.

Mr. Stier (Croatia) (*spoke in Spanish*): I would like, at the outset, to congratulate you, Mr. President, on Bolivia's assumption of the presidency of the Security

Council and to wish you a successful month as you fulfil your mandate.

(*spoke in English*)

I welcome the Presidents of the International Tribunal for the Former Yugoslavia (ICTY) and the Residual Mechanism, Judges Agius and Meron, as well as Prosecutor Brammertz. I thank them for today's briefings and their reports (see S/2017/436 and S/2017/434) and assure them of Croatia's continued support for their efforts aimed at ensuring accountability.

It is little wonder that, some 25 years ago, Croatia, at the time under brutal aggression, was one of the States strongly supporting the establishment of a tribunal mandated to adjudicate and punish the most serious violations of international humanitarian law. The expectations of all those who cried for help and justice were extremely high. Global television audiences witnessed appalling scenes of Croatian towns and villages being levelled to the ground and their population savagely "cleansed". One such place was the village of Škabrnja, the scene of the most gruesome atrocities committed in 1991, when 84 of its inhabitants brutally perished. Most of them were executed on their doorsteps or in their basement shelters, massacred in the streets or thrown under the treads of passing tanks. After causing the carnage, the perpetrators wrote a cynical message on the wall of the destroyed elementary school in large letters: "Welcome to a dead village". Although he was not indicted for the events in this Croatian village, it was in Škabrnja and the surrounding towns and villages that, in 1991, Ratko Mladić, whose trial is still pending before the ICTY, began his warpath, which later continued in neighbouring Bosnia and Herzegovina.

The ICTY, whose work we are discussing today, will soon enter history with a significant legacy, in particular with its achievements in the fight against impunity. Equally important is the Tribunal's role in giving a voice to the thousands of victims of horrific crimes.

It could be said that the Tribunal is far from satisfying the cries of all those who experienced, in the worst manner possible, the brutality and cruelness of the perpetrators. It might also even seem that the Tribunal is far from upholding important legal principles and the mandate it was established to fulfil, that is, proceedings of reasonable length and the application of existing rules and principles of international humanitarian and criminal law. While little can be done about a number of those complaints, a stringent application of existing rules and principles, so important for both the legacy of the Tribunal and international criminal law in general, must now be our focus.

It is worthwhile repeating that in creating the ICTY, the Security Council strictly confined the Tribunal to the application of existing international humanitarian law and did not in any way authorize the creation of precedents or "legislation" in that branch of law. Such an understanding was also clearly expressed in Security Council members' official statements following the adoption of resolution 827 (1993), by which the Tribunal was formally established (see S/PV.3217), as well as in the report of the Secretary-General on the establishment and functioning of the ICTY (see S/25704), which explicitly limited the application of international humanitarian law by the Tribunal to rules that are beyond any doubt part of customary law.

In that context, let me remind Council members how, for example, the Permanent Representative of the United Kingdom, Sir David Hannay, in his discussion after the adoption of resolution 827 (1993), stated that "[t]he Statute does not, of course, create new law, but reflects existing international law in this field". The Permanent Representative of Spain, Mr. Yañez Barnuevo, summarized the Tribunal's role by saying that it is not established "to create new international law or to change existing law but to guarantee effectively respect for that law", while Ambassadors Arria and Sardenberg, of Venezuela and Brazil, respectively, also voiced their understanding of the Tribunal's limited jurisdiction to the application of existing international law.

While completing its task of establishing individual criminal responsibility in the armed conflict on the territory of the former Yugoslavia and thereby contributing to lasting peace and security in the area, the ICTY must live up to the highest standards with regard to the scrupulous interpretation and appropriate application of existing international humanitarian law, in accordance with its statute. Furthermore, pursuant to article 6 of the ICTY statute, the Tribunal does not have the competency to make findings on State responsibility. Defining the Tribunal's jurisdiction further, articles 6 and 7 are appropriately entitled "Personal jurisdiction" and "Individual criminal responsibility".

Any attempt to expand beyond the limits I just mentioned, and especially any attempt to impose

individual criminal responsibility without requiring a sufficient causal relationship between alleged criminal purpose and actual crimes, or even without requiring a specific intent to commit those crimes, which is the extended form of the joint criminal endeavour, also known as JCE III, is inconsistent with the current state of international humanitarian law and has the potential to seriously damage international criminal law — and not only international criminal law.

Indeed, if mere foreseeability of illegal violence, which always and inevitably looms over any military operation, automatically engages liability of all military or civilian officials with any kind of authority over the forces engaged, then all military and civilian officials with de jure or de facto authority over those forces would automatically be held liable for all criminal acts committed by any member of those forces. According to this concept, State and political leaders could be held responsible for offences committed by others who may share their goals, regardless of whether those leaders shared an intent to commit specific criminal offences as a means of achieving those goals. This novum in international criminal law and international humanitarian law, if confirmed, would seriously jeopardize, if not disable, States, including those whose representatives are sitting around this table, from conducting any kind of legal military operations, peacekeeping operations included, and would turn them into unpredictable endeavours.

Allow me to add that this type of liability of military and civilian officials, based seemingly more on the conflation of political considerations with criminal activities than on anything else, was already rightly rejected by the Tribunal in a number of its cases. It was also recently rejected by the Extraordinary Chambers in the Courts of Cambodia and, before that, by the first permanent criminal court to adjudicate the most serious international crimes, the International Criminal Court, and it has never even been contemplated in national jurisdictions.

Finally, let me stress that Croatia is confident that, in the last miles of its path, by strictly adhering to the mandate entrusted to it by the Security Council to apply the highest standards of international humanitarian law, the ICTY will make an immense contribution to international peace and security.

The President (*spoke in Spanish*): I now give the floor to the representative of Bosnia and Herzegovina.

Mr. Vukašinović (Bosnia and Herzegovina): I would like to thank the leadership of both the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals for their reports (see S/2017/436 and S/2017/434) and today's detailed briefings on the progress of work of their respective institutions.

We note the continued progress and steady work of the ICTY as it approaches the end of its mandate and forecasted closure at the end of this year. We also understand that certain circumstances continue to impede the work of the ICTY, but we hope that the Tribunal will finish its work in an efficient manner within the anticipated time frame in line with the relevant resolutions of the Security Council.

We welcome the continued activities carried out by the Residual Mechanism in the reporting period as it increasingly assumes its designated responsibilities. We hope that the Mechanism will draw and build upon the best practices of the ICTY and the International Criminal Tribunal for Rwanda and fulfil all conditions necessary for the successful completion of its mandate, with continued support from the international community.

Throughout the years, the cooperation of Bosnia and Herzegovina with the ICTY has been steadfast and full, as evidenced by the statistics of the Tribunal. In the same vein, we remain committed to contributing actively to the Tribunal's efforts to accomplish its mission, and we will continue in the same manner with the Mechanism.

In addition to cooperating with the ICTY, Bosnia and Herzegovina remains committed to improving the efficiency of domestic war crimes proceedings, bearing in mind that only an independent judiciary, as a basic pillar of democratic institutions, is able to render justice in an impartial way. In that regard, Bosnia and Herzegovina continues to further strengthen its national judicial system at all levels in order to bring to justice all those responsible for war crimes. The justice sector reform strategy adopted for the period 2014-2018 remains crucial to the long-term reinforcement of the rule of law and the further consolidation of the judicial system, including measures to improve judicial independence and efficiency.

We welcome the support of the European Union for the implementation of the strategy, and the support of the Organization for Security and Cooperation in Europe (OSCE) and the United Nations Development

Programme (UNDP), principally in connection with witness-protection activities and the appropriate assistance and support to victims.We are further pleased that the European Union has agreed to extend the joint European Union/ICTY training project for national prosecutors and young professionals from the former Yugoslavia, as it has played a very important role in building the capacities of the national justice sector for the past eight years and the efficient transition from the ICTY to national war crimes prosecutions.

The national war crimes strategy plays a crucial role in enhancing public trust in judicial institutions, and above all in the promotion of reconciliation. Its consistent implementation will continue to improve the consistency of juridical practices throughout the entire country at all levels. The implementation of the strategy is a complex process in which many institutions at all levels of authority in Bosnia and Herzegovina participate. Despite numerous challenges, important results have been achieved. This is reflected in a steady increase in the efficiency in prosecutions of war crimes cases and some progress in resolving outstanding Category II cases, as well as in issuing important indictments.

We believe that consistent cooperation among the Prosecutor's offices and the relevant authorities of Bosnia and Herzegovina, Serbia and Croatia, in accordance with the principles of international justice and rule of law, is crucial to investigating and prosecuting pending war crimes. The promotion of stronger and more coordinated regional cooperation therefore remains our priority, as a matter of principle, dedication to justice and reconciliation in our region.

Finally, the fight against impunity is a crucial precondition for sustainable peace, reconciliation and the rule of law. And it does not end with 2017. Processing war crimes, regardless of the national or religious origin of the perpetrators and victims, is of crucial importance to achieving our goal of building a peaceful and prosperous Bosnia and Herzegovina integrated into the European Union.

The President (*spoke in Spanish*): I now give the floor to the representative of Serbia.

Mr. Backović (Serbia): I thank you, Sir, for the opportunity to speak to the Council today as representative of the Republic of Serbia. I take this opportunity to welcome the Presidents and Prosecutor of the International Tribunal for the former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals. I thank them for their semi-annual reports.

Before I specifically address the reports, allow me to make a general statement in that regard.

The issue that we are concerned with is the scope of the mandate of the Prosecutor with respect to the issues addressed in the reports. The issues that are raised therein relate to the fields of education, history, politics, culture and social development. In that regard, while we definitely consider those issues to be worth discussing and addressing, the concern remains as to the scope of the mandate provided in the statute and the relevant resolution concerning the Residual Mechanism. We note two elements of that concern.

The first pertains to the members of the Security Council and is for them to deal with. What is the actual mandate that they have given to the Prosecutor? However, the other side of the issue, with which we are concerned as one of the ultimate beneficiaries of the mandate of the Prosecutor's Office, is the issue of the competence of legal professionals to deal with issues such as education, history and so on. To illustrate the point concerning the scope of the mandate, I would respectfully draw the Council's attention to the reports of the President and the Prosecutor. If we compare the two, we may be able to see what I am referring to in greater detail.

The key principle of the fight against impunity for the most serious international crimes is the proven, continuous commitment of the Member States. To prove their commitment, States need to align their normative framework with relevant international conventions and the ICTY statute, cooperate with the ICTY in order to enable efficient investigation and prosecution; and organize their domestic judicial systems in a way that enables independent, impartial and efficient war crimes proceedings.

If we are assessing today the extent to which Serbia has fulfilled these requirements, it is clear that Serbia has unambiguously shown its commitment. Our criminal legislation is fully aligned with relevant standards and enables cooperation with the ICTY, without exception, regarding all acts that the Security Council recognized in the ICTY statute as serious international war crimes. Based on this legislation, Serbia has proven its commitment, as clearly reflected in the number and rank of defendants — I emphasize

the word "rank" — who have been surrendered to the ICTY.

The Republic of Serbia has handed over 45 defendants to the Tribunal out of the total of 46 defendants whose surrender has been demanded from Serbia. One defendant committed suicide before he could be handed over to the Tribunal. Of that number, 14 defendants were arrested in the Republic of Serbia, four defendants were arrested abroad, in the framework of cooperation between national security services with foreign agencies, and 27 defendants voluntarily surrendered. No other country has surrendered even close to a number of high-ranking officials as Serbia has. That is — or should be — clear proof of Serbia's commitment to prosecuting war crimes.

In addition, Serbia has granted the ICTY Prosecutor free access to important evidence located in Serbia, such as documents, archives and witnesses. So far, Serbia has positively resolved 2,179 out of 2,180 requests for assistance received from the Offices of the ICTY Prosecutor and the Mechanism Prosecutor. Only one request from the Office of the Mechanism's Prosecutor, of a newer date, is currently undergoing the realization procedure.

Serbia has allowed 757 witnesses to testify freely, despite the right/obligation they had to withhold testimony due to the State, military or official rules regarding privileged information. One thousand three hundred and twenty-nine requests were issued by various defence teams, and no pending requests for assistance exist.

Serbia has carried out all 11 requests for witness protection, efficiently monitored all provisional-release cases and ensured that all accused were returned to ICTY detention upon request. Currently, Serbian authorities are monitoring two cases of provisional release, in connection with which those persons are in the process of being surrendered to the ICTY as well.

In parallel with the contribution to the ICTY's work, Serbia has shown an indisputable commitment to continuously fight impunity for core international crimes through proceedings before national courts. Serbian authorities have a strategic approach, as evidenced by the obligations that Serbia undertook via its action plan under chapter 23 and its national strategy for the prosecution of war crimes, adopted by the Government in 2016. Both documents have as a backbone the idea of zero tolerance for impunity regardless of the ethnicity, religion or rank of victims or perpetrators. Both documents have been welcomed by the most senior Serbian officials, as evinced in numerous public statements. Those facts stand squarely against the assertions made by the Prosecutor in his report.

The freedom of speech is highly ranked on the list of Serbian priorities. Every citizen is free to express her opinion without consequences, as long as those statements do not constitute a criminal offence. However, single statements by some individuals or civil-society organizations should not be interpreted as an official position of the State of Serbia. Serbian commitment should not be judged on anything other than results achieved so far in cooperation with the ICTY, prosecutions of war crimes before domestic courts and regional cooperation. Generalizations based on impressions, speculation, conjecture or innuendo cannot contribute to a fair assessment of the situation, as mandated by the statute.

We are aware that the prolonged procedure for the election of the new war crimes prosecutor raised some concerns. However, they did not affect the performance of the prosecutor; nor has it in any way halted progress in Serbia on prosecuting war crimes, or our commitment thereto. On the contrary, Serbia actively works on strengthening the capacities of the prosecutor. In addition to the appointment of the new prosecutor, the election procedure for three more deputy prosecutors is ongoing. Now that we have a new prosecutor in place, a new prosecutorial strategy will be finalized in a few months.

Trial monitoring of war crimes proceedings by civil society will start again in September, along with special ongoing training for judges, public prosecutors and police officers in charge of the investigation and prosecution of war crimes. Amendments to the criminal code were adopted few months ago in order to align it with the International Convention for the Protection of All Persons from Enforced Disappearance. Numerous activities have been undertaken in order to improve the status of victims and witnesses, in line with international standards. Ten indictments for war crimes against 21 individuals have been confirmed in Serbia in 2016 and 2017.

We understand the Prosecutor's concern about reconciliation and cooperation in the region, but I must emphasize that regional cooperation remains a priority

for Serbia. Our singular commitment is reflected in statistical data on regional cooperation, and the quality of our efforts can be the subject of assessment when we are talking about Serbia's commitment to regional cooperation. However, reciprocity is needed if we are to achieve more results in regional cooperation.

According to statistics from the war crimes prosecutor's office, as of December 2016 Serbia had positively resolved 38 of 52 requests coming from Bosnia and Herzegovina, and nine requests were denied while five are still pending; 50 out of 78 cases coming from Croatia have been honoured, with 11 requests denied and 17 are pending. In parallel, only 10 out of 22 Serbian requests have been positively resolved by Bosnia and Herzegovina. The result is even more worrying with regard to requests for assistance submitted to Croatia: only 10 out of 27 requests have been positively resolved.

Serbia should not be judged negatively because of its respect for its own Constitution, laws and court decisions, which all accord with the basic legal principles. After all, the rule of law and separation of powers are key principles of all traditional and modern democracies. Bearing that in mind, let me raise three questions.

First, could we elect the prosecutor or her deputies without conducting a procedure in accordance with relevant laws and contrary to the autonomy of the public prosecution office and the liberty of the members of Parliament to vote for or against proposed candidates? Of course, the answer is no.

Secondly, could we surrender the Petar Jojić, Vjerica Radeta and Jovo Ostojić contrary to an independent court decision based on the law of Serbia and the statute of the ICTY? In that regard, let me make three points. First, those individuals are not accused of war crimes. Secondly, those individuals are not accused of war crimes. And, thirdly, those individuals are not accused of war crimes. Those individuals are accused of contempt of court. The Serbian court applied the clear language of domestic law and the statute enacted by the Security Council in deciding not to surrender those three individuals. Again, they are accused of contempt of court, not war crimes. I would respectfully request that members please read the statute, in particular article 29, which was mentioned here today. That may help members understand why the Serbian court has refused to surrender them.

Thirdly, could we finisn *Djukić* case while ignoring the procedural rights of the accused? If there are any concerns about the length of trials, I would draw members' attention to the varying lengths of various trials, even at the Tribunal itself. Procedural safeguards and the rights of the accused, and respect thereof, are among the basic principles of modern democracies. To summarize in that regard, we believe that the rule of law cannot be enforced by violating. That is just not the way to enforce the rule of law.

In conclusion, Serbia's commitment to cooperate with the ICTY and deal efficiently with war crimes before its own courts is indisputable. The same goes for the Residual Mechanism. We want to believe that other Governments in the region are equally willing to work together on reconciliation, cooperation and stability in the region while all along supporting the ICTY and the Residual Mechanism in accomplishing their missions. We also hope that ICTY and Mechanism officials will recognize the efforts of our Government to promote those values.

The meeting rose at 12.40 p.m.